

NAME OF EVENT: Unilateral Presidencies and Submissive Legislatures: Rebalancing Our Separation of Powers (This event has been approved for 5 hours of California MCLE credit)

DATE | TIME | LOCATION: Thursday, February 6, 2020 | 8:30 a.m. to 3:00 p.m. | Georgetown University Law Center, Gewirz 12th Floor, 600 New Jersey Ave NW, Washington, DC 20001

BRIEF DESCRIPTION: The modern presidency is primarily the intellectual handiwork not of “the Framers” but of one Framers – Alexander Hamilton. Unlike his contemporaries who assumed that Congress would be the dominate force in American government, Hamilton advocated for an “elective monarch” with powers far in excess of those granted in the text of Article II of the U.S. Constitution. Thanks in part to a submissive Congress that has consistently and repeatedly ceded core Article I functions to the executive, Hamilton’s unilateralist presidency is the modern presidency. The Constitution’s famous “checks and balances” didn’t foresee congressional abdication of power to the executive be it through the Authorization of the Use of Military Force, the National Emergencies Act, or the Trade Expansion Act. These delegations represent a complete restructuring of American government. Coupled with the rise of the unitary executive theory in our highest courts, how can we responsibly rebalance our separation of powers? What functions does Congress need to reassert as core legislative duties? What legal narratives do we need to counterbalance unitary executives who are trying to fulfill Hamilton’s dream of an “elective monarch”?

SPEAKERS’ NAMES AND BIOS:

Kimberly Atkins, Senior News Correspondent, WBUR, *Moderator*

Mieke Eoyang, Vice President, Third Way, *Moderator*

Gene Healy, Vice President, Cato Institute

Hon. Jeh Johnson, Partner, Paul Weiss, former United States Secretary of Homeland Security

Martin S. Lederman, Professor from Practice, Georgetown University Law Center

Simon Lester, Associate Director, Herbert A. Stiefel Center for Trade Policy Studies at the Cato Institute

Reta Jo Lewis, Senior Fellow and Director of Congressional Affairs, German Marshall Fund of the United States, *Moderator*

Hon. Brad Miller, Of Counsel, Guttman, Buschner & Brooks PLLC, former Representative for North Carolina’s 13th Congressional District

Erica Newland, Counsel, Protect Democracy

Victoria Nourse, Ralph V. Whitworth Professor in Law, Georgetown University Law Center

Zinelle October, Interim President, ACS

Sai Prakash, James Monroe Distinguished Professor of Law, University of Virginia School of Law

Zachary Price, Professor of Law, U.C. Hastings College of Law San Francisco

Hon. Jamie Raskin, U.S. Representative for Maryland’s 8th congressional district

Bijal Shah, Associate Professor of Law, Arizona State University Sandra Day O’Connor College of Law

Hina Shamsi, Director, ACLU National Security Project

Donald Sherman, Deputy Director, Citizens for Responsibility and Ethics in Washington (CREW)

Kate Shaw, Professor of Law and Co-Director of the Floersheimer Center for Constitutional Democracy, Yeshiva University Benjamin Cardozo School of Law

AGENDA OF EVENT:

8:30-9:15am—Welcome and 15-minute Keynote Remarks by Hon. Jamie Raskin

9:15-10:45am—Panel Discussion: The Rise of the Unilateralist Presidency

10:45-11:00am: Break

11:00-12:30pm—Panel Discussion: Protector-in-Chief: Cooption of National Security by the Executive Branch

12:30-1:30pm: Lunch and 15-minute Keynote Address by Hon. Jeh Johnson

1:30-3:00pm—Panel Discussion: Imagining a Resurgent Congress

MATERIALS FOR EVENT:

Cato Institute, [*A Real Emergency: Executive Power Under the National Emergencies Act*](#) (panel discussion co-sponsored by ACS and moderated by Gene Healy).

Gene Healy, [*Arrogance of Power Reborn: The Imperial Presidency and Foreign Policy in the Clinton Years*](#), CATO INSTITUTE (2000).

Martin S. Lederman, [*The Commander in Chief at the Lowest Ebb—A Constitutional History*](#), 121 HARV. L. REV. 941-1111 (2008).

Brad Miller, [*The 40-Year War*](#), AM. PROSPECT (Sept. 9, 2019).

Erica Newland, [*I worked in the Justice Department. I hope its lawyers won't give Trump an alibi.*](#), WASH. POST (Jan. 10, 2019) (subscription required).

VICTORIA NOURSE, [*THE SPECIAL COUNSEL, MORRISON V. OLSON, AND THE DANGEROUS IMPLICATIONS OF THE UNITARY EXECUTIVE THEORY*](#), AM. CONST. SOC'Y (June 2018).

Sai Prakash, [*The Imbecilic Executive*](#), 99 VA. L. REV. 1361 (2013).

Zachary Price, [*Funding Restrictions and Separation of Powers*](#), 71 VANDERBILT L. REV. 357 (2018).

Bijal Shah, [*The Attorney General's Disruptive Immigration Power*](#), 102 IOWA L. REV. ONLINE 129 (2017).

Hina Shamsi, [White Supremacist Violence is on the Rise. Expanding the FBI's Powers Isn't the Answer.](#) ACLU (Aug. 29, 2018).

Kate Shaw, [The White House and Congress are Heading for a Collision. Who Will Win?](#), N.Y. TIMES (Mar. 6, 2019).